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OGC 81-03376
24 April 1981

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM :
Associate Deputy General Counsel: Robert M. Gates
Director, DCI/DDCI Executive StaffSUBJECT : Reaction of CIA Components to IC Staff Issues
Paper of 23 April 1981 on Proposed Changes
to E.O. 12036

1. Yesterday we met with Agency components to solicit their views on the attached issues paper prepared by the ICS for the NFIC meeting Monday. You are already aware of several Agency concerns. Without reiterating those that previous papers have brought to your attention, we have briefly summarized the current concerns below.

2. Issues 3 and 3A. Protection of Foreign Intelligence and Sources and Methods. CIA components are of the view that these changes are necessary and are clearly within the mandate of the DCI's statutory authorities. You will remember that these two specific proposals were developed as a result of your thought to deal with sources and methods separately from foreign intelligence. Most of the Community, particularly DOD elements, seem to prefer to keep the current language (current Sections 1-601(i) and 1-604) rather than adopt the simplified versions that we propose. It was not the Agency's intent in rewriting these two sections to change the intent of the Order on these two subjects or to modify current authorities or practices. Given this position, there can be no real harm in reverting to the existing language. It is too bad that the current rather awkward language on these two subjects cannot be simplified and shortened, however. Paragraph 8 of this memorandum urges simplification and shortening of the Order as a guiding principle.

3. Issue 7: Improve Military Access to National Foreign Intelligence. CIA components raised the point that this proposal pertains also to improving access to allied military forces as well as U.S. forces, yet there is no provision made for coordination of this with the Secretary of State. Furthermore, they made the point that there are other mechanisms that exist for providing information, particularly SCI, to foreign military forces. These mechanisms have been established in a DCI/NFIB context. Thus, there seems to be no need for the Director to be required to establish a program with respect to allied military forces.

4. Informational Issues (Part II)

a. Point 1: There is extremely strong objection by most, if not all, CIA components to this proposed language. The language was adopted as a compromise to State's original proposal to develop for the DCI section of the Order language parallel to existing Section 1-904. The original State proposal would require the DCI to coordinate with the Secretary of State to ensure that national foreign intelligence activities are consistent with U.S. foreign policy objectives and interests. It is CIA's view that if the language as now proposed appears in the Order, particularly without reference to the fact that the Secretary of State shall "coordinate with the DCI to ensure," the Department of State will be given virtual veto power over all intelligence operations. Furthermore this language could be interpreted to authorize the Department to require information of CIA on operational activities in order to allow the Secretary of State to fulfill his responsibilities. The best solution seems to be to go back to State's original proposal to develop a section parallel to current Section 1-904 under the DCI section.

b. Point 2: Among the alternative formulations proposed, the first is unacceptable to CIA components and they strongly prefer the second. This is the one, however, that may be the subject of the most public outcry.

c. Point 10: Most CIA components were of the view that the phrasing of the language in the issues paper at the very end should be "transfer this responsibility to the Secretary of Defense if directed by the President." As you know, CIA's favored position would be to drop this concept from the Order. A satisfactory compromise, however, may be vague language within the DCI section such as "Ensure that planning is conducted to meet the special collection needs of the Secretary of Defense in times of military crisis or when directed by the President."

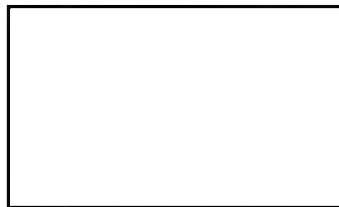
5. Several other points are worth noting. As you know, the first issue scheduled to be addressed will be that of whether either the NFIB or NFIC structure should be spelled out in the Order. As you know, it is CIA's position that the DCI will have much more flexibility if the specification of both of these advisory bodies is left out of the Order. Furthermore, the Order will be considerably shorter and simpler if the Order does not contain the detail necessary to deal with these two bodies. You already know, however, that there seems to be unanimity within the Community against this position; thus, you should expect a vigorous, united fight against the Order being silent on these matters. Two problems are related to this major issue. If either the NFIB and/or NFIC is contained in the Order, DOD has proposed a number of changes to the membership and responsibilities of these bodies. In the event that the CIA position does not prevail on this major issue the DOD proposals will have to be carefully examined. Furthermore, the issues paper identifies a number of parts of the Order that are being proposed for modification to require the DCI to seek the advice of either the NFIB or NFIC. If neither of these bodies is specified in the Order, the "advice" proposals become meaningless. If, on the other hand, it is agreed that one or both of these bodies should be detailed in the Order, then you should focus on each of these "advice" proposals. CIA's position is that each of these proposals is unnecessary. If adopted, each of them is a mandate from the President telling the DCI that he must

seek advice before acting, notwithstanding the fact the points are merely advisory. This, in our opinion, is bureaucracy at its worst.

6. The issues paper does not specify what CIA's position is on Issue 5 (senior officials). CIA originally proposed that the "senior official" language be changed so we obviously support the replacement of this term.

7. As you know from a recent NFAC paper, the Agency has experienced a number of problems in the narcotics intelligence area. It is the view of the Agency that removing DEA from the scope of the Order (a Justice proposal discussed as Issue 8) will exacerbate these problems. Both NFAC and the DO urge that you argue to keep DEA in the Community. Admittedly this will not solve the problems but accepting the Justice proposal certainly cannot help. As you know from the paper, NFAC is experiencing difficulties in the substantive intelligence area and the DO has had problems in the foreign liaison area.

8. You may want to consider raising an issue not covered in the issues paper; that is to direct those responsible for developing the specific language of the Order to simplify, clarify, eliminate excessive detail, and shorten the Order where possible. There are repeated complaints, particularly within operating components in the Agency, that E.O. 12036 is too complicated and convoluted to understand. The length, excessive detail, and repetitive language all combine to discourage operators from trying to understand it and abide by its provisions. An Executive Order on U.S. Intelligence Activities should not become a "tax code." It should state general principles but should leave the detail to the discretion of responsible program managers or to bilateral agreements between various elements of the Community. A guiding principle of those charged with developing new language should not be "If it ain't broke, don't fix it." (a view that many within the Community seem to be taking) because this attitude will only result in an Order that is no better than 12036. There is no doubt that a little sincere, non-parochial effort is all that is needed to make significant improvement in the language of the Order. Several of the original CIA proposals were put forward in this spirit but unfortunately have been interpreted otherwise.



Robert M. Gates

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Attachment:
As stated

OGC:JED:sw
1 - ER
1 - D/DCI/DDCI/ES
1 - OGC